

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

EPIFANIO CASTILLO,

Debtor.

Case No. 13-11-10718 TA

EPIFANIO CASTILLO,

Plaintiff

vs.

Adv. No. _____

NEW PENN FINANCIAL, LLC,
dba SHELLPOINT MORTGAGE SERVICING,
CITIMORTGAGE, INC., GREEN TREE
SERVICING, LLC, DITECH FINANCIAL, LLC
and FHLMC VPC 198746,

Defendants.

**COMPLAINT FOR SANCTIONS FOR VIOLATION OF
CONFIRMATION ORDER, NOTICE OF FINAL CURE AND 11 U.S.C. §524**

COMES NOW the Plaintiff, Epifanio Castillo, by and through his undersigned counsel of record, and for his complaint, *STATES*:

1. Plaintiff was the Debtor in the above captioned Chapter 13 bankruptcy.
2. Defendants CitiMortgage, Inc., Green Tree Servicing, LLC, Ditech Financial, LLC and New Penn Financial, LLC, dba Shellpoint Mortgage Servicing (hereinafter collectively “Mortgagee”) are all foreign companies transacting business in New Mexico.
3. This cause of action is a core proceeding under 28 U.S.C. §157.
4. This Court has jurisdiction over the parties and over the subject matter pursuant to 11 U.S.C. §1334.
5. Plaintiff filed his bankruptcy on February 23, 2011.

6. Debtor filed a plan, and three amended plans providing for the cure of mortgage arrears; the second amended plan was confirmed and consummated. Docket Nos. 3, 33, 59, 67, 90.

7. Mortgagee appeared in the bankruptcy case, objected to confirmation, filed a Proof of Claim, filed several notices of change to the mortgage over time, and even filed a late stay relief motion. Docket No. 43, 165-166, 168, 170-171; Claim No. 5, undocketed events March 16, 2012 May 10, 2012, April 10, 2013, May 10, 2013, March 7, 2014, April 16, 2014, July 3, 2014, April 25, 2015, December 9, 2015, January 9, 2017 and March 20, 2017.

8. The claim was transferred among the various party Defendants three times. Docket Nos. 143, 193 and 194.

9. Upon plan completion the Chapter 13 Trustee filed a Notice of Final Cure Mortgage Payment pursuant to Bankruptcy Rule 3002.1. Docket No. 192.

10. Mortgagee never responded to the Notice of Final Cure Mortgage Payment. Docket, generally.

11. Despite actual notice of the bankruptcy provided to Defendant by the undersigned, Defendant has continued collection activity against the Plaintiffs in violation of 11 U.S.C. §362 and §524.

12. The bankruptcy was discharged on December 12, 2017. Docket No. 203.

13. Despite the failure to respond to the Notice of Final Cure, Mortgagee has refused three payments from the Debtor, and has alleged that the Debtor is actually \$8,000 in arrears on his mortgage payments.

14. Every document provided to Debtor by the Mortgagee has inconsistencies in the principal balance due, mortgage payment amount and significant other problems.

15. Mortgagee continues to refuse to provide Debtor with important information about his mortgage obligation, including furnishing regular monthly statements.

16. In light of Mortgagee's actual awareness of the bankruptcy and in light of the egregious nature of the conduct in question, it is clear Mortgagee's violation of the confirmation order, Notice of Final Cure, Bankruptcy Rule 3002.1 and 11 U.S.C. §524 was willful and intentional.

17. Defendant has been required to retain the undersigned to enforce his rights against the Mortgagee, and has incurred costs and attorney's fees.

18. Plaintiff has been damaged by Defendant's illegal conduct in an amount to be determined at trial.

19. Plaintiff is entitled to costs, attorney's fees, actual damages and punitive damages from Defendant. 11 U.S.C. §524, 105; Bankruptcy Rule 3002.1(i).

WHEREFORE, Plaintiff prays the Court to issue a declaration that the mortgage is current due to Mortgagee's failure to object to the Final Cure Notice, to disallow any and all post-petition charges, to award him actual damages, punitive damages and his costs and reasonable attorney's fees in an amount to be determined at trial, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Filed electronically 3/13/18
Michael K. Daniels
P.O. Box 1640
Albuquerque, NM 87103
(505) 246-9385; 246-9104 fax

